

REMARKS

This amendment is submitted in full response to the outstanding Office Action dated December 27, 2006, on the merits in the above-identified patent application.

Pursuant to the outstanding Office Action, the Examiner has rejected Applicant's original claims 1-14 under 35 U.S.C. 112, first and second paragraphs, for the reasons set forth on pages 2-6 in the Office Action.

In response, Applicant has cancelled all of the original claims 1-14 and Applicant now presents new independent claims 15 and 16 which have been added pursuant to the above amendment. Applicant's new independent claims 15 and 16 are fully supported by the original disclosure and it is respectfully submitted that the rejection under 35 U.S.C. 112, first and second paragraphs has been overcome.

The Examiner has rejected Applicant's original claims 1-5, 7-12 and 14 under 35 U.S.C. 102 (b) as being anticipated by Berkeley (U.S. Patent No. 3,832,459).

Additionally, the Examiner has rejected Applicant's original claims 1,3,5-8, 10, and 12-14 under 35 U.S.C. 102 (b) as being anticipated by Pera (U.S. Patent No. 4,906,488).

Finally, the Examiner has rejected Applicant's original claims 1-14 under 35 U.S.C. 102 (e) as being anticipated by Wohrle et al. (U.S. Patent No. 6,566,562). Applicant has cancelled original claims 1-14 and has inserted new

independent claims 15 and 16. Applicant's new independent claims 15 and 16 patentably define over the prior art references cited by the Examiner.

The patent references to Berkeley and Pera fail to disclose a composition for use in asphalt and coal tar mixtures comprising, in combination, an odor masking agent selected from the group consisting of: concentrated extract of vanilla; concentrated extract of peppermint; concentrated extract of cinnamon; and synthetic bubble gum fragrance; and a holding agent structured to bond with obnoxious odors and selected from the group consisting of: diethyl phthalate; and diethylene glycol methyl ether, as specifically recited in Applicant's new independent claims 15 and 16.

The Examiner notes that Wohrle discloses "perfume oils...diluted with a solvent for perfumings." Wohrle further discloses that "suitable solvents for this purpose are, for example, diethylene glycol monoethyl ether, and diethyl phthalate." Wohrle further discloses various perfume oils, as noted by the Examiner on page 7 of the Office Action.

Notwithstanding, Wohrle fails to specifically teach a composition for use in asphalt and coal tar mixtures comprising an odor masking agent, as claimed by Applicant, combined with a holding agent that is structured to bond with obnoxious odors, wherein the holding agent is selected from the group consisting of: diethyl phthalate; and diethylene glycol methyl ether, as specifically recited in Applicant's new claims 15 and 16. Wohrle fails to disclose diethyl phthalate and diethylene glycol methyl ether as holding

agents in a composition for use in asphalt and coal tar mixtures that is structured to bond with obnoxious odors. Wohrle fails to teach Applicant's invention as claimed in new independent claims 15 and 16.

Accordingly, is respectfully submitted that the rejection of Applicant's claims under 35 U.S.C. 102 (b) and (e) based on the references to Berkeley, Pera and Wohrle has been overcome.

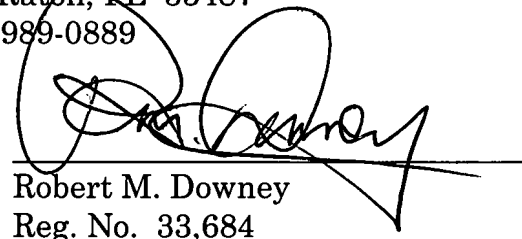
Since nowhere in the art is Applicant's invention, as now claimed, to be found, taught or suggested, is it respectfully submitted that this application is now in condition for allowance.

For all of the reasons advanced above, the Examiner is respectfully requested to reconsider the allowability of Applicant's new claims 15 and 16 and to pass this case to early favorable allowance.

Respectfully submitted,

ROBERT M. DOWNEY, PA.
Attorneys for Applicants
6751 N. Federal Hwy., Suite #300
Boca Raton, FL 33487
(561) 989-0889

By:



Robert M. Downey
Reg. No. 33,684